

### **IC 27-1-3.5**

#### **Chapter 3.5. Annual Audited Financial Reports**

### **IC 27-1-3.5-1**

#### **"Commissioner" defined**

Sec. 1. As used in this chapter, "commissioner" refers to the insurance commissioner appointed under IC 27-1-1-2.

*As added by P.L.244-1989, SEC.2.*

### **IC 27-1-3.5-2**

#### **"Domestic insurer" defined**

Sec. 2. (a) As used in this chapter, "domestic insurer" means an insurer organized under the laws of Indiana.

(b) If a domestic insurer is a member of an "insurance holding company system" (as defined in IC 27-1-23-1), the term "domestic insurer" also includes:

- (1) any person in immediate control of the domestic insurer; and
- (2) any affiliate:
  - (A) in which the domestic insurer has invested; or
  - (B) that is indebted to the domestic insurer.

*As added by P.L.244-1989, SEC.2.*

### **IC 27-1-3.5-3**

#### **"Independent auditor" defined**

Sec. 3. As used in this chapter, "independent auditor" means a certified public accountant or a certified public accounting firm that conducts an annual audit of a domestic insurer as required by this chapter.

*As added by P.L.244-1989, SEC.2.*

### **IC 27-1-3.5-3.5**

#### **"Significant deficiency" defined**

Sec. 3.5. As used in this chapter, "significant deficiency" means a reportable condition described in the Professional Standards of the American Institute of Certified Public Accountants.

*As added by P.L.251-1995, SEC.3.*

### **IC 27-1-3.5-4**

#### **"Work papers" defined**

Sec. 4. (a) As used in this chapter, "work papers" means the records kept by the independent auditor of the procedures followed, the tests performed, the information obtained, and the conclusions reached by the independent auditor's audit of the financial statements of a domestic insurer.

(b) The term includes any audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents, and schedules or commentaries that:

- (1) are prepared or obtained by the independent auditor in the course of any audit of the financial statements of a domestic

insurer; and

(2) support the independent auditor's opinion on the domestic insurer's financial statements.

*As added by P.L.244-1989, SEC.2. Amended by P.L.251-1995, SEC.4.*

#### **IC 27-1-3.5-5**

##### **Application of chapter; exemptions**

Sec. 5. (a) Except as provided in subsections (b) and (c), this chapter applies to all domestic insurers.

(b) A domestic insurer that has:

(1) direct written premiums of less than one million dollars (\$1,000,000) in any calendar year; and

(2) less than one thousand (1,000) policyholders or certificate holders of directly written policies nationwide at the end of a calendar year;

is exempt from this chapter with respect to that year. However, the commissioner may require compliance with this chapter upon a finding that compliance with this chapter is necessary for the commissioner to carry out a statutory responsibility.

(c) A foreign or an alien insurer that files an audited financial report in another state or country pursuant to that state's or country's requirement for audited financial reports is exempt, with respect to the year of that audited financial report, from the requirement to file an audited financial report with the commissioner under this chapter, if:

(1) the commissioner has found the other state's or country's requirement for audited financial reports to be substantially similar to the requirements of this chapter;

(2) copies of the audited financial report, the report on significant deficiencies in internal controls, and the accountant's letter of qualifications filed with the other state or country are filed with the commissioner in accordance with the filing dates set forth in sections 8, 12, and 12.5 of this chapter; and

(3) a copy of a notification of an adverse financial condition report that is filed with the other state is filed with the commissioner within the time specified in section 11 of this chapter.

This subsection does not prevent the commissioner from ordering, conducting, or performing examinations of foreign or alien insurers under the rules, regulations, and practices of the department.

*As added by P.L.244-1989, SEC.2. Amended by P.L.251-1995, SEC.5.*

#### **IC 27-1-3.5-6**

##### **Annual audit; filing; time; extension**

Sec. 6. (a) A domestic insurer shall have an audit by an independent auditor every year and shall file an audited financial report with the commissioner every year before June 1 immediately following the December 31 that ends the year reported on in the

financial report. The commissioner may require a domestic insurer to file an audited financial report earlier than June 1 if the commissioner gives the domestic insurer ninety (90) days advance notice of the earlier filing date.

(b) An extension of the June 1 filing date may be granted by the commissioner for thirty (30) days upon a showing by the insurer and its independent auditor of the reasons for requesting the extension and a determination by the commissioner that there is good cause for an extension. The request for an extension must be submitted in writing at least ten (10) days before the due date, and must include sufficient detail to permit the commissioner to make an informed decision with respect to the requested extension.

*As added by P.L.244-1989, SEC.2. Amended by P.L.251-1995, SEC.6.*

### **IC 27-1-3.5-7**

#### **Contents of report**

Sec. 7. (a) The annual audited financial report filed by a domestic insurer under this chapter shall report:

- (1) the financial position of the domestic insurer as of the end of the most recently ended calendar year; and
- (2) the results of the domestic insurer's operations, cash flow, and changes in capital and surplus for that year;

in conformity with statutory accounting practices prescribed, or otherwise permitted, by the department of insurance.

(b) The financial statements included in the annual audited financial report filed by a domestic insurer under this chapter shall be examined by an independent auditor. The independent auditor shall conduct its examination of the domestic insurer's financial statements in accordance with generally accepted auditing standards, and shall consider such other procedures illustrated in the Financial Condition Examiner's Handbook published by the National Association of Insurance Commissioners as the independent auditor considers necessary.

(c) An annual audited financial report filed by a domestic insurer under this chapter must include the following:

- (1) The report of the insurer's independent auditor.
- (2) A balance sheet reporting admitted assets, liabilities, capital, and surplus.
- (3) A statement of operations.
- (4) A statement of cash flow.
- (5) A statement of changes in capital and surplus.
- (6) Notes to financial statements. The notes must be those required by the National Association of Insurance Commissioners' annual statement instructions and any other notes required by statutory accounting practices, which must include the following:
  - (A) A reconciliation of differences, if any, between the financial statements included in the audited financial report and the annual statement filed by the insurer under

IC 27-1-20-21, including a written description of the nature of these differences.

(B) A summary of the ownership and relationships of the domestic insurer and all affiliated companies.

(d) The financial statements included in a domestic insurer's audited financial report shall be prepared in the same form, and using language and groupings substantially the same, as the relevant sections of the annual statement of the insurer filed with the commissioner under IC 27-1-20-21.

(e) The financial statements included in a domestic insurer's audited financial report must be comparative, presenting the amounts as of December 31 of the year of the report and comparative amounts as of the immediately preceding December 31. However, in the first year in which an insurer is required to file an audited financial report under this chapter, the comparative data may be omitted.

*As added by P.L.244-1989, SEC.2. Amended by P.L.251-1995, SEC.7.*

### **IC 27-1-3.5-8**

#### **Independent auditor**

Sec. 8. (a) A domestic insurer that is required by this chapter to file annual audited financial reports shall, not more than sixty (60) days after becoming subject to the requirement, register in writing with the commissioner the name and address of the independent auditor retained by the insurer to conduct the annual audits required by this chapter. The domestic insurer shall continuously ensure that the information provided to the commissioner under this section is accurate, and shall inform the commissioner in writing of any change in the identity or address of its independent auditor.

(b) A domestic insurer shall obtain a letter from its independent auditor that:

(1) states that the independent auditor is aware of the provisions of IC 27 and the administrative rules of the department of insurance that relate to auditing, accounting, and financial matters; and

(2) affirms that the independent auditor will express its opinion on the financial statements of the domestic insurer in the terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by the department, specifying such exceptions as the independent auditor may believe appropriate.

The domestic insurer shall file a copy of this letter with the commissioner.

(c) If an independent auditor that audited the most recent financial report filed by the insurer with the commissioner under this chapter subsequently ceases to be the independent auditor for the insurer, the insurer shall:

(1) not more than five (5) business days after the cessation of the independent auditor's services, notify the commissioner in writing of the identity and address of the new independent

auditor;

(2) not more than ten (10) business days after the notification given in subdivision (1), furnish the commissioner with a separate letter that states whether in the twenty-four (24) months preceding the engagement of the new independent auditor there were any disagreements between the insurer and its former independent auditor on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which, if not resolved to the satisfaction of the former independent auditor, would have caused the former independent auditor to make reference to the subject matter of the disagreement in the former independent auditor's statement of its opinion on the insurer's financial report, and, if there was such a disagreement, provides a description of the disagreement. Disagreements required to be reported under this subdivision include those at the decision making level that were resolved:

(A) to the former accountant's satisfaction; and

(B) not to the former accountant's satisfaction; and

(3) comply with subsection (d).

For the purposes of this subsection, "decision making level" refers to the personnel of the insurer who are responsible for the presentation of the insurer's financial statements and the personnel of the independent auditor who are responsible for rendering the opinion of the auditor on the insurer's financial report.

(d) A domestic insurer subject to the provisions of subsection (c) shall:

(1) provide its former independent auditor with a copy of the letter furnished to the commissioner under subsection (c)(2); and

(2) request in writing its former independent auditor to furnish a letter addressed to the insurer stating whether the former independent auditor agrees with the statements contained in the letter furnished to the commissioner under subsection (c)(2) and, if not, stating the reasons for the former independent auditor's disagreement.

The domestic insurer shall furnish the commissioner with a copy of any responsive letter it receives from its former independent auditor within five (5) business days after the insurer receives the letter.

*As added by P.L.244-1989, SEC.2. Amended by P.L.251-1995, SEC.8.*

### **IC 27-1-3.5-9**

#### **Qualifications of independent auditor**

Sec. 9. (a) For the purposes of this chapter, the commissioner may not recognize as an independent auditor any individual or firm that is not:

(1) a certified public accountant (if an individual) or made up of certified public accountants (if a firm); or

(2) in good standing with:

(A) the American Institute of Certified Public Accountants;  
and

(B) all of the authorities that license certified public accountants and certified public accounting firms in the states in which the individual or firm is licensed to practice.

(b) A partner or other individual responsible for rendering a report may not act in that capacity for more than seven (7) consecutive years. An individual who has been responsible for rendering a report for seven (7) years is disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for two (2) years. A domestic insurer may apply to the commissioner and request to be exempted from the seven (7) year rotation requirement on the basis of unusual circumstances. The commissioner may consider the following factors in determining if relief should be granted:

(1) The number of partners, expertise of the partners, or number of insurance clients in the currently registered firm.

(2) The premium volume of the domestic insurer.

(3) The number of jurisdictions in which the domestic insurer transacts business.

(c) The commissioner may not recognize as an independent auditor or accept an annual audited financial report prepared in whole or part by a person who:

(1) has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act under federal law (18 U.S.C. 1961 through 1968) or state law (IC 35-45-6) or any dishonest conduct or practices under federal or state law;

(2) has been found to have violated the insurance law of this state with respect to any previous reports submitted under this chapter; or

(3) has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under this chapter.

(d) The commissioner may conduct a hearing under IC 4-21.5 to determine whether an independent auditor engaged by a domestic insurer is sufficiently independent of that domestic insurer to be capable of exercising independent judgment and expressing an objective opinion on the financial statements in the annual financial report filed by the insurer under this chapter. If the commissioner determines that the auditor is not sufficiently independent of the insurer, the commissioner shall require the insurer to replace the auditor with another that is sufficiently independent of the insurer.  
*As added by P.L.244-1989, SEC.2. Amended by P.L.251-1995, SEC.9.*

### **IC 27-1-3.5-10**

#### **Consolidated returns**

Sec. 10. A domestic insurer may apply in writing to the commissioner for approval to satisfy the requirements of this chapter

by filing audited consolidated or combined financial statements instead of separate annual audited financial statements if the insurer is part of a group of insurance companies that utilizes a pooling or one hundred percent (100%) reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer cedes all of the insurer's direct and assumed business to the pool. If a domestic insurer whose application is approved elects to file a consolidated return, the insurer shall file, with its financial statements, a columnar consolidating or combining schedule, which must meet the following requirements:

- (1) Amounts shown on the consolidated or combined audited financial report shall be shown on the schedule.
- (2) Amounts for each insurer subject to this section shall be stated separately.
- (3) Noninsurance operations shall be shown on the schedule on an individual basis.
- (4) Explanations of consolidating and eliminating entries shall be included.
- (5) A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the schedule and comparable amounts shown on the annual statements of the insurers.

*As added by P.L.244-1989, SEC.2. Amended by P.L.130-1994, SEC.13; P.L.116-1994, SEC.17.*

#### **IC 27-1-3.5-11**

##### **Report from independent auditor of financial condition irregularities; subsequent facts**

Sec. 11. (a) A domestic insurer required to file annual audited financial reports under this chapter shall require its independent auditor to report in writing to the board of directors or the board of director's audit committee, not more than five (5) business days after making a determination, the independent auditor's determination that:

- (1) the domestic insurer has materially misstated to the commissioner the financial condition of the insurer as of the date of the balance sheet being examined by the independent auditor; or
- (2) the domestic insurer does not meet the minimum capital and surplus requirements of Indiana as of the date of the balance sheet being examined by the independent auditor.

The domestic insurer who has received a report under this section shall forward a copy of the report to the commissioner within five (5) business days after receipt of the report and shall provide the independent accountant making the report with evidence of the report being furnished to the commissioner. An independent auditor who does not receive the evidence that the report was filed with the commissioner within the required five (5) business days shall furnish the commissioner a copy of the report within the next five (5) business days. An independent auditor may not be liable to any person for a statement made in connection with this subsection, if the

statement is made in good faith compliance with this subsection.

(b) If the independent auditor of a domestic insurer, after the filing of the insurer's audited financial report under this chapter, becomes aware of facts that, if the independent auditor had been aware of the facts when writing its report, might have affected the independent auditor's report that was included in the insurer's audited financial report, the independent auditor shall take such action as is prescribed in the Professional Standards of the American Institute of Certified Public Accountants.

*As added by P.L.244-1989, SEC.2. Amended by P.L.251-1995, SEC.10.*

### **IC 27-1-3.5-12**

#### **Report describing deficiencies in internal control structure**

Sec. 12. (a) A domestic insurer required by this chapter to file an audited financial report with the commissioner shall also furnish the commissioner with:

- (1) a written report (or a letter on reportable conditions) describing the significant deficiencies in the insurer's internal control structure, if internal control deficiencies were noted by the domestic insurer's independent auditor in connection with its audit; and
- (2) a written discussion of any remedial action taken or proposed in connection with the written report.

(b) The written report and written discussion required under subsection (a) must be filed not later than sixty (60) days after the filing of the annual audited financial statements.

*As added by P.L.244-1989, SEC.2. Amended by P.L.251-1995, SEC.11.*

### **IC 27-1-3.5-12.5**

#### **Letter from independent auditor; contents**

Sec. 12.5. The independent auditor shall furnish the domestic insurer, in connection with and for inclusion in the filing of the annual audited financial report, a letter stating the following:

- (1) That the independent auditor is independent with respect to the insurer and conforms to the standards of the independent auditor's profession as contained in the Code of Professional Ethics and Pronouncements of the American Institute of Certified Public Accountants and the rules of Professional Conduct of the Indiana State Board of Accountancy.

(2) The:

- (A) general background and experience; and
- (B) experience in audits of insurers;

of the staff assigned to the audit. The letter must also state whether each member of the staff is a certified public accountant. This subdivision does not prohibit the independent auditor from using the staff considered appropriate where such use is consistent with the standards prescribed by generally accepted auditing standards.



(3) That the independent auditor understands that the commissioner will be relying on the independent auditor's annual audited financial report and the independent auditor's opinion in the report for the monitoring and regulation of the financial positions of the insurers.

(4) That the independent auditor consents to the requirements of section 13 of this chapter and agrees to make available for review by the commissioner, the commissioner's designee, or the commissioner's appointed agent, any of the independent auditor's work papers and significant communications.

(5) That the independent auditor is properly licensed by an appropriate state licensing authority and is a member in good standing in the American Institute of Certified Public Accountants.

(6) That the independent auditor is in compliance with the requirements of section 9 of this chapter.

*As added by P.L.251-1995, SEC.12.*

### **IC 27-1-3.5-13**

#### **Independent audit work papers and communications; review by department examiners**

Sec. 13. (a) A domestic insurer required to file an audited financial report under this chapter shall require its independent auditor to make available for review by department examiners:

(1) all work papers prepared in the conduct of the independent auditor's examination; and

(2) any record of significant communications related to the audit between the independent auditor and the insurer that took place at:

(A) the offices of the insurer;

(B) the department;

(C) the offices of the independent auditor; or

(D) any other reasonable place designated by the commissioner.

The insurer shall require the independent auditor to retain the audit work papers and communications until the department has filed a report on the examination covering the period of the audit but not later than seven (7) years after the date of the audit report.

(b) Department examiners, in conducting a review of an independent auditor's work papers, may make and retain copies of the work papers and communications. A review of an independent auditor's work papers and communications shall be considered an investigation and all work papers and communications obtained or copied during the course of that investigation are confidential under IC 27-1-3.1-15.

*As added by P.L.244-1989, SEC.2. Amended by P.L.251-1995, SEC.13.*

### **IC 27-1-3.5-14**

#### **Exemption application; hearing**

Sec. 14. (a) In response to a written application from a domestic insurer, the commissioner may grant an exemption from compliance with this chapter if the commissioner finds, upon review of the application, that compliance with this chapter would constitute a financial or an organizational hardship upon the domestic insurer. An exemption may be granted at any time for a specified period.

(b) Within ten (10) days after the denial of a domestic insurer's written request for an exemption from this chapter, the insurer may, in writing, request a hearing on its application for an exemption. The hearing shall be held under IC 4-21.5.

*As added by P.L.244-1989, SEC.2. Amended by P.L.251-1995, SEC.14.*

#### **IC 27-1-3.5-15 Repealed**

*(Repealed by P.L.251-1995, SEC.22.)*

#### **IC 27-1-3.5-16**

##### **Penalty for noncompliance**

Sec. 16. A domestic insurer that fails to file an audited annual financial report before July 1 or any other deadline established by the commissioner for the insurer under this chapter without having obtained an extension is subject to a civil penalty of fifty dollars (\$50) per day until the report is received by the commissioner.

*As added by P.L.244-1989, SEC.2.*

#### **IC 27-1-3.5-17**

##### **Effect of chapter on examinations under IC 27-1-3.1**

Sec. 17. This chapter does not prohibit or in any way restrict the commissioner from ordering, conducting, or performing examinations of insurers under IC 27-1-3.1.

*As added by P.L.244-1989, SEC.2. Amended by P.L.26-1991, SEC.6.*

#### **IC 27-1-3.5-18**

##### **British or Canadian insurers**

Sec. 18. (a) In the case of a British or Canadian insurer, the annual audited financial report refers to the annual statement of total business on the form filed by the company with its domiciliary supervision authority audited by an independent auditor.

(b) For a British or Canadian insurer, the letter required under section 8 of this chapter shall state that the accountant is aware of the requirement relating to the annual audited statement filed with the commissioner under section 6 of this chapter and shall affirm that the opinion expressed is in conformity with those requirements.

*As added by P.L.251-1995, SEC.15.*